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□ **Brief History**

In August of 1963, thousands of people gathered to march on Washington to urge the adoption of federal civil rights protections. Among their demands were an end to discrimination in the workplace and that federal funds be withheld from any agency which practices discrimination with those funds. The march laid the groundwork for monumental civil rights legislation, such as the Voting Rights Act and the Civil Rights Act.

When Civil Rights Act of 1964 was passed the following year, it became the most comprehensive legislation to achieve equal rights and protect citizens from discrimination. [Section 703 \(a\)](#)

of the Act made it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges or employment, because of such individual's race, color, religion, sex, or national origin." Title VII however, makes exemptions for church groups and faith-based organizations, allowing them to discriminate in hiring practices in order to maintain their organization's integrity. This had traditionally referred to the actions of the organization while using its own money.

Both before and after the Civil Rights Act, Presidents throughout the past 60 years have used Executive Orders to strengthen federal anti-discrimination policy. On June 25, 1941, President Roosevelt signed an Executive Order that banned discrimination by defense contractors based on race, religion, color or national origin. Roosevelt's [Executive Order 8802](#) was the first to prohibit employment discrimination and marked the beginning of fair employment practices in the United States. These protections against employment discrimination were expanded by subsequent Presidents.

[Executive Order 11246](#)

, signed by President Johnson in 1965, expanded the prohibitions against employment discrimination to all government contractors, not just defense contractors. Every President of the United States since 1965 has enforced these Executive Orders. Over time, various civil rights laws were passed that contained similar prohibitions against discrimination and

employment based on race, religion, color, national origin or sex. None of these Executive Orders affected the religious exemption set forth in Title VII, but they drew the separation between Church and State so that federal taxpayer money was not used to fund religious activity and discrimination based on religion was not permitted while using taxpayer dollars.

In the 1990s, then-Senator John Ashcroft created the concept known as 'Charitable Choice' during the drafting of the 1996 Welfare Reform Act. The concept altered existing law to permit taxpayer-financed social service funding of houses of worship in a few welfare programs.

This approach represented a radical change. In the past, government sometimes contracted with organizations such as Catholic Charities or United Jewish Communities to provide services, but safeguards were kept in place to protect the integrity of the groups and the interests of taxpayers. Houses of worship did not contract directly with the government; rather, religious institutions created separate entities (usually 501(c)(3)s) to handle public funds and did not incorporate religion into the publicly funded program. Further, Johnson's Executive Order had maintained safeguards against employment discrimination in these programs receiving taxpayer dollars.

President Clinton signed these Charitable Choice provisions into law but issued signing statements indicating that his Administration would not "permit governmental funding of religious organizations that do not or cannot separate their religious activities from [federally-funded program] activities" because such funding would violate the Constitution. In short, the Clinton Administration interpreted the provisions as being constrained by the constitutional mandates that prohibit the direct funding of houses of worship and government-funded employment discrimination. No federal money went to organizations that were pervasively sectarian, no money went to any organization with the Title VII exemption, and therefore no one could exercise discrimination using these funds while Clinton was President.

Under the Bush Administration, Charitable Choice was vastly expanded through a series of Executive Orders. In 2001, [Executive Orders 13198](#) and [13199](#) created and set out organizational guidelines for a White House Office of Community and Faith-Based Initiatives.

[Executive Orders 13280](#)

(2002),

[13342](#)

(2004), and

[13397](#)

(2006) mandated that the departments of Justice, Education, Labor, Health and Human Services, Housing and Urban Development, Agriculture, Commerce, Veteran Affairs, and

Homeland Security, the Agency for International Development and the Small Business Administration all establish a Center for Faith-Based and Community Initiatives. In 2002, the most controversial Executive Order was issued –

[Executive Order 13279](#)

– which made it easier for churches and other faith-based organizations to receive federal money by letting them circumvent certain anti-discrimination laws. Under the umbrella of the Faith-Based Initiative, the Bush administration began allowing discrimination with federal money for the first time since the 1960s.

For decades, religious organizations have been providing social services, including in some cases with the use of government funds, without the Faith-Based Initiative. The fundamental differences between the Faith-Based Initiative and the long-standing legal provisions regarding faith-based organizations' participation are: (1) allowing proselytization during a secular, government-funded program; and (2) permitting employment discrimination with federal funds. Any program that could be federally funded under the Faith-Based Initiative could have been funded before it if the sponsoring organization agreed not to discriminate in employment and not to proselytize. Moreover, no religious organization has stated to Congress that it needs to be able to proselytize or discriminate in order to run a successful program. There has been a general consensus that proselytization with federal funds violates the First Amendment to the Constitution, but the issue of whether discrimination with federal funds should be permitted remains hotly debated.

Recent Developments

During the 2008 campaign, President Obama said that he would not allow discrimination with federal money, unlike the Bush Administration. However, on February 5th 2009, when the Obama Administration unveiled its new [White House Office of Faith-Based and Neighborhood Partnerships](#), reversals of Bush's controversial policies were notably absent. Joshua DuBois, who has been appointed to lead the Office, stated that claims of discrimination will be investigated "on a case-by-case basis."

The policy of no discrimination in federal programs is a fundamental element of our civil rights strategy - if we fail to enforce civil rights in federal programs, we lose our moral authority to impose those laws on private employers who may be devoutly religious. With the troublesome Bush policies still intact, employment discrimination will continue. Because religious discrimination is explicitly allowed under the Faith-Based Initiative, there are other implications for discrimination that also take place under the guise of religious discrimination. Many churches and faith-based institutions are ethnically and racially homogeneous. Where religious discrimination is allowed, it is difficult to ensure that racial discrimination is not also occurring. In addition, religious discrimination can also lead to discrimination based on sex.

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Press

- [3.29.10 | Chicago Tribune | Help wanted, but only Christians need apply](#)
- [02.04.10 | | The Wall Street Journal | Faith Policies Part of Political Calculus](#)
- [02.03.10 | The Washington Post | Religious leaders worry that Obama's faith council is for show](#)
- [1.28.10 | The Washington Times | Op-Ed: Obama's Faith-Based Boondoggle](#)
- [1.11.10 | Global Post | Non-Christians Need Not Apply](#)
- [10.03.09 | LA Times | Op-Ed: Faith-Based Hiring](#)
- [09.15.09 | The Washington Post | Obama Cautious on Faith-Based Initiatives](#)
- [09.10.09 | USA Today | Obama's Faith-Based Panel: Talk, not Substance?](#)
- [04.20.09 | The Washington Post | Religious Hiring Taken Off Agenda](#)
- [03.01.09 | The New York Times | Op-Ed: Keeping the Faith, Ignoring the History](#)
- [02.18.09 | Anti-Defamation League | Press Release](#)
- [02.11.09 | The Washington Post | Op-Ed: Don't Use My Tax Dollars to Discriminate](#)
- [02.10.09 | Rainbow Push Coalition | Press Release, Rainbow Push Urges Separation of Church and State](#)
- [02.06.09 | Virginian Pilot | Plan to fund faith-based programs stirs backlash](#)
- [02.06.09 | Los Angeles Times | Obama upholds Bush faith policy](#)
- [02.06.09 | The New York Times | White House Office to Expand](#)
- [02.05.09 | The Wall Street Journal | Faith-Based Program Gets Wider Focus](#)
- [02.05.09 | Americans United for the Separation of Church and State | Press Release](#)

Letters

[Representatives Bobby Scott, Chet Edwards, Barney Frank, Jerrold Nadler, Melvin Watt, Lynn Woolsey, Carolyn McCarthy and Chris Van Hollen Letter to Chairman Henry Waxman: urging nondiscrimination standards in upcoming Substance Abuse and Mental Health Services Administration \(SAMHSA\) reauthorization \[March 13, 2009\]](#)

[Anti-Defamation League Letter to President Obama](#) : expressing that federal funding of faith organizations should include essential constitutional safeguards for protecting religious organizations, beneficiaries, and the government [February 19, 2009]

[Representatives Bobby Scott and Carolyn McCarthy Letter to Attorney General Mukasey](#) : soliciting information regarding a 2007 Department of Justice Ruling that World Vision could discriminate on the basis of religion and maintain a federal grant under the Juvenile Justice and Delinquency Prevention Act [February 29, 2008]

Representative Bobby Scott Letter to the Former President Clinton: urging the Former President to speak out against Charitable Choice by reaffirming the Presidential signing statements [September 5, 2007]

Testimony

Representative Scott's Testimony before the House Rules Committee: urging the acceptance of a non-discrimination provision in the text of HR 1, a multi-billion dollar recovery and reinvestment plan [January 27, 2009]

Representative Scott's [Floor Statement](#) during consideration of HR 1429 in the 110th Congress: speaking against an Amendment to allow employment discrimination in the Head Start program [May 2, 2007]

Representative Scott's [Floor Statement](#) during consideration of HR 27 in the 109th Congress: speaking in favor of an Amendment to prohibit discrimination in job training programs [March 2, 2005]

Other Resources

[Pew Forum: More Americans Question Religion's Role in Politics](#)